

**Town of Amherst**  
**Zoning Board of Appeals - Special Permit**

*DECISION*

**Applicant:** Nancy Gonter-Weld, 40 Pomeroy Court, Amherst MA 01002

**Date Application filed with the Town Clerk:** January 7, 2005

**Nature of request:** The applicant seeks a Special Permit to convert from a single-family residence to a two-family residence as an extension of a use on a non-conforming lot, under Sections 9.22 and 3.3241 of the Zoning Bylaw, on the premises at 40 Pomeroy Court (Map 20C, Parcel 75, R-N Zone)

**Legal notice:** Published on January 12<sup>th</sup> and 19<sup>th</sup>, 2005 in the Daily Hampshire Gazette and sent to abutters on January 10, 2005.

**Board members:** Tom Simpson, Ted Rising, Susan Pynchon

**Submissions:** The applicant initially submitted:

- A site plan showing the property with house location and setbacks, the proposed floor plans, and a locus map, prepared by Wright Brothers, Inc, dated 11/18/04 and 12/21/04.
- An updated site plan dated 1/6/05 prepared by Wright Builders, Inc., dated 1/19/05
- A management plan
- A letter from the applicant outlining the history of her request, dated 1/24/05

For the continued hearing, the applicant submitted:

- A list of eight (8) multi-family homes in a larger neighborhood, and an accompanying map of The Pomeroy Lane area.
- A petition of support signed by seven immediate neighbors. The applicant's two children also signed the petition. Five of about 12 houses in the neighborhood were represented on the petition.
- A letter of support from Leonce Ndikumana, 34 Pomeroy Court, dated 2/8/05

Zoning staff submitted two memos, #2005-1 and #2005-2 which outlined the dimensional and parking requirements, the Bylaw requirements for conversion, and notes from the initial evening of testimony.

The Conservation Commission submitted an Order of Conditions issued February 8, 2005, and a map of the property marking the wetlands to the north of the property, and the fifty (50) foot buffer zone for building boundaries. The map was prepared by New England Environmental, Inc, dated 1/12/05.

**Site Visit:** January 25, 2005

The Board noted the location of the property, at the end of a cul-de-sac with about twelve homes. To the north of the property is open space – conservation land and wet lands. The lots in the area are spacious, with most of the houses were built around 1980. The applicant's ranch-style house is a one of the smallest in the neighborhood.

**Public Hearing:** January 27, 2005 and February 9, 2005

Nancy Gonter represented herself at the hearing. She introduced the others involved in this request – partner David Dupont who also lives in the house, mother Marilyn Gonter who wishes to move into the proposed second unit, and architect Nancy Schwartz from Wright Builders.

The applicant said that she had spoken to many of the neighbors along Pomeroy Court, and all with whom she spoke supported the proposal. She also sent the same letter that the ZBA received to all in the neighborhood, outlining what she proposes for her property. No one responded with objections to the proposal.

Ms. Gonter showed pictures of the one-story ranch house and the open space behind, adding that the Board didn't get a chance to see much at the viewing because of the deep snow. The parcel is triangular shaped, with most of the land in the back; it abuts conservation land and wetlands.

The applicant stated that she had the wetlands delineated on the land that abuts her property to the north. The Conservation Commission determined that the proposed addition is outside of the 50 foot buffer zone of the wetland delineation.

The design of the proposed addition features a large window seat and a porch so that her elderly parents, who wish to move into the second unit, can look at the woods and pond behind the house.

Ms. Gonter stated that the proposed exterior changes to the house will not significantly alter the appearance of the house, since the addition is L-shaped and "hugs" the house, with the bulk of it in the back. The end result will make the house appear a little fatter, by fourteen (14) feet on part of the easterly side, she stated. The existing garage will be moved forward by twelve (12) feet and will have a dormer over the garage to mirror the roofline on the westerly side of the existing house. She plans to put vinyl siding on the entire house, or put vinyl clapboards on the addition.

Board member Ted Rising asked how the house and proposed new addition will be divided. The size of the proposed addition is close to 1000 square feet, Ms. Gonter stated. About 370 square feet of the existing house will be converted to the addition, and another 60 square feet will be a common foyer for both units.

Ms. Gonter said that all of the proposed addition except for new kitchen will be universally accessible, since her father is in a wheelchair. Ms. Gonter stated that the existing house will be altered as well so that her father can roll anywhere from one unit to the other.

Architect Nancy Schwartz said that the connecting access is designed with one-hour firewalls.

The Building Commissioner, Bonnie Weeks, said that the common space needs to have one-hour fire walls as well.

The proposed apartment, given the accessibility needs, will have three means of access – from the garage, the mudroom and the back of the house.

Board member Susan Pynchon said that she has questions about the neighborhood. Except for the Pomeroy Co-operative, which is at the corner of Pomeroy and West Street a mile away, she wondered if there was any other multi-family housing in the area. The applicant replied that she didn't know of any. Mr. Pynchon asked what would happen after Ms. Gonter provides for her parents - would she rent later to non-family tenants? Ms. Pynchon feared that converting the Gonter single-family house could change the dynamics of this single-family neighborhood.

The applicant replied that this is the only option she has to take care of her parents. In contrast, the variety of tenants (students, short-term renters) who lived in the house previously proved to be poor neighbors. They changed the character of the area more than would this proposal.

Marilyn Gonter, 888 East Pleasant Street, said that her daughter and partner have to carry Mr. Gonter into her daughter's house, and her own house has too many corners and narrow hallways for her husband to get around in a wheelchair. Having a home that is wheelchair accessible will make a big difference.

Board member Ted Rising asked if creating an accessory apartment instead of a converting to two units would work. Could they live with less space?

The applicant replied that they initially considered that option. But the Bylaw only allows 600 square feet for a supplemental apartment, and they concluded that it wasn't possible given the extra space needed for handicapped requirements.

Land Use Planner Chris Brestrup stated that there is precedent for two-family dwellings in single family neighborhoods. Also, planning staff can research whether this neighborhood in fact has only single-family residences.

A correction was noted to the frontage given for the parcel under consideration.

For a cul-de-sac, instead of measuring frontage at the property line, the accurate measurement is made twenty (20) feet back. With this change, the frontage is 75 feet, not the 54.87 feet as shown on the submitted plan. Required frontage in an R-N zoning district is 120 feet; hence the property is still non-conforming.

The parcel is 23,042 square feet in area. Twenty-six thousand (26,000) square feet is needed for a two-family home in an R-N zoning district. Hence the addition of the second unit would extend the non-conformity of the lot. All other dimensional requirements are met for this parcel, before and after the addition.

Tom Simpson moved to continue the hearing to February 9, 2005, 7 pm. Ted Rising seconded the motion, and the vote was unanimous.

**Continued Public Hearing:** February 9, 2005

Applicant Nancy Gonter Weld introduced her family – parents Bob and Marilyn Gonter, and children Elliot and Olympia Weld. She also introduced her builder Jonathan Wright and architect Nancy Schwartz. Ms. Gonter submitted a petition of support by the neighbors, a letter of support from a neighbor, and a map of some of the multi-family residences in the area.

ZBA Chair Tom Simpson read aloud the letter of support from Leonce Ndikumana, 34 Pomeroy Court. The letter stated that “the town and the community should support all those who wish to perpetrate that sense of family multi-generational living.”

Jonathan Wright, who helped design the new addition, spoke to the Supplemental Apartment bylaw, Section 5.011. He said that the requirement of 600 square feet for floor area doesn’t work. There is no privacy, and a second bedroom is often needed for an adult caregiver in a case like the one under consideration. Extra space is needed for viability. Northampton’s bylaw allows for 900 square feet for gross floor space, which can work.

Mr. Wright spoke to the design of the addition, saying that it enhances the current plain ranch in appearance, it fits well on the lot, and impact is modest.

Mr. Wright also spoke to the positive aspects of more than one generation living together. He also said that the Gonter family has few options, and he wants to join with others to help them.

Mr. Simpson asked if there are any changes to the plans since the initial submissions. Mr. Wright replied that the accessible ramp needs to be extended in order to achieve the required 1 to 12 pitch. Also, the screened porch may have to be moved because of the fire code. If the porch is enclosed, it becomes a habitable space and thus needs the fire wall protection. The applicant is thinking of moving the porch to the eastern side of the house now.

ZBA member Susan Pynchon asked how the list of multi-family homes in the area was generated. Ms. Gonter replied that it was by anecdotal evidence only. She did not research the assessor's database, so she might have missed some. She described the nine houses in the area that are either supplemental apartments or two-family residences. Carolyn Holstein, zoning assistant, had evidence of two more multi-family residences along Pomeroy Lane. These two houses have operated without a Special Permit setting limits. There are no two-family residences along Pomeroy Court.

Ms. Pynchon asked about the petition of support. The applicant stated that the nine (9) signatures from five homes were collected the previous day, and was a function of who was home and if the family has children. She did not go to every home along Pomeroy Court. Ms. Pynchon inquired about the number of houses along the street. Between ten and twelve was the reply.

Ms. Pynchon then asked to see the abutters list, and a general discussion ensued about what guides the ZBA in approving conversions of single to two-family homes. Mr. Simpson said that about six special permits a year are given for supplemental apartments or conversions to two-family homes, and these are given throughout Amherst.

The public was invited to speak to the petition.

Charlie Atwood, of 69 Pomeroy Lane, said that he lived across the street from Pomeroy Court. As a taxpayer and as someone contemplating retirement, he noted that many residents would prefer to have another dwelling unit on their property in order to be able to afford to stay in Amherst. He does not think that the proposed second unit would negatively impact the neighborhood, and having more than two generations in one household benefits everyone. He feels that prohibiting home conversions would negatively impact the town.

Lisa Kosanovic, of 74 Mt. Holyoke Drive, said that she lives just north of the Gonter property. A path through conservation area connects her street with Pomeroy Court. She said that this proposal fits well into the neighborhood and meets the specifications of Bylaw Section 10.38. Both her and Ms. Gonter's neighborhoods have a strong sense of community, which relies on families and extended families. She said that the Gonter parents are a part of the Amherst community, and she wants to keep them here. The proposal is a positive one, and should be promoted, not discouraged.

Nancy Schwartz, 153 High Street, and architect for the project, said that she could not have moved to Amherst without moving into a multi-family dwelling. As the owner now, she has discretion over who the tenants are, and they fit well into the neighborhood. It is absentee landlords who can be a problem, and the home in this case will be owner-occupied.

Ted Rising moved to close the evidentiary part of the hearing. Susan Pynchon seconded the motion, and the vote was unanimous.

**Public Meeting:**

The Board discussed the petition, and the conditions that could be imposed if a Special Permit would be approved. Ms. Pyncheon said that she shares the sentiments of the applicants and neighbors. A compromise was reached with the Board agreeing that a second unit would not change the character of the neighborhood as long as the house is owner-occupied and family lives in the second unit.

The Board discussed the dimensional requirements for conversion in an R-N district. The proposal will increase the non-conformity, since the lot is 3,000 square feet less than that required for conversion in an R-N district. But, according to Section 3.3241 of the Zoning Bylaw, the Board may modify the dimensional requirements of Table 3 one time only, to allow the addition of one unit, if the proposal meets the provisions of Section 9.22

**Findings:**

The Board finds under Section 9.22 of the Zoning Bylaw, Converted Dwellings, that the proposed addition fits well on the lot and will enhance the appearance of the neighborhood. The extension of the use to include other family members will not change the character of the neighborhood and will be less detrimental as a controlled use than was the previous rental use. The large lots and abutting non-buildable open space ensure that the second unit on the property will have little impact on the area.

The Board finds under Section 3.3241 of the Zoning Bylaw, Converted Dwellings, that:

1. The conversion to a two-family is less than the maximum number of units (4) allowed in an R-N district
2. The modifications to the building will not substantially change the building's character or its effect on the neighborhood.
3. The proposal is located close to a heavily traveled street, Pomeroy Lane
4. The proposal is close to a business district located at the corner of Pomeroy Lane and West Street
5. The proposal will be from one to two units, one of which shall remain owner-occupied
6. The dwelling units are connected to the public sewer.
7. A management plan has been included as an integral part of the application
8. A landscape plan to shield the new parking area from the abutters to the east is included in the proposed changes.
9. The two units shall have over 17,000 square feet of open space on the lot, 15,000 more than the required 2,000 sq. ft. of open space for the occupants of the two units.

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings, that:

10.380 & 10.381 – The proposal is suitably located, in that there are a number of multi-family residences in the larger neighborhood.

10.382, 10.383 & 10.385 – The proposal will not constitute a nuisance in that the addition to the ranch house is small and compliments the design visually, the lights will be

downcast and not affect the neighborhood, and the addition does not impact the wetlands to the north. The additional parking will be screened, and the proposal will be no more inconvenient to abutters than would the existing single family home

10.384,10.386,10.392 & 10.396 – Adequate facilities will be provided, in that there are four parking places proposed and screening will be provided on the easterly border. The lot is open and level for outdoor recreational activities, plus it abuts a conservation trail and open land.

10.387 – The proposal provides safe vehicular and pedestrian movement within the site and in relation to the neighborhood in that the lot is located at the back of the cul-de-sac with much space for extra cars. The addition of a small second unit will not make an impact on the area.

10.388 – not applicable

10.389 – The single family home was managed by the owner who resides on the premises. The proposed addition will be managed as well by the property owner.

10.390 – The proposal protects from flood hazards in that it does not approach the wetland buffer zone and provides erosion control in the back of the property.

10.391 – The proposal does not interfere with natural features of the area (the wetlands to the north of the property.)

10.398 – The proposal is in harmony with the general purpose and intent of the Bylaw, in that it promotes the health and safety of senior citizens of the Town.

### **Zoning Board Decision:**

Ted Rising moved to approve the proposal, with conditions. Susan Pynchon seconded the motion.

For all of the reasons stated above, the Board voted unanimously to APPROVE the request by Nancy Gonter Weld for a Special Permit to convert a single-family residence to a two-family residence under Sections 9.22 and 3.3241 of the Zoning Bylaw, on the premises at 40 Pomeroy Court (Map 20C, Parcel 75, R-N Zone), with conditions.

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TOM SIMPSON                      TED RISING                      SUSAN PYNCHON

FILED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2005 at \_\_\_\_\_,  
in the office of the Amherst Town Clerk \_\_\_\_\_.

TWENTY-DAY APPEAL period expires, \_\_\_\_\_ 2005.  
NOTICE OF DECISION mailed this \_\_\_\_\_ day of \_\_\_\_\_, 2005  
to the attached list of addresses by \_\_\_\_\_, for the Board.

NOTICE OF PERMIT or Variance filed this \_\_\_\_\_ day of \_\_\_\_\_, 2005,  
in the Hampshire County Registry of Deeds.

**Town of Amherst**  
**Zoning Board of Appeals**

*SPECIAL PERMIT*

The Amherst Zoning Board of Appeals hereby grants a Special Permit to Nancy Gonter Weld to convert a single-family residence to a two-family residence as an extension of the use on a non-conforming lot, under Sections 9.22 and 3.3241 of the Zoning Bylaw, on the premises at 40 Pomeroy Court (Map 20C, Parcel 75, R-N Zone), subject to the following conditions.

1. The main residence shall be owner-occupied.
2. The second unit shall be restricted to relatives of the owners and shall be occupied by no more than two persons.
3. The exterior siding of the two residential units shall be compatible.
4. Final revised site plans, including plans for screening the parking area, and floor plans shall be approved at a business meeting of the ZBA prior to construction.
5. All new exterior lighting shall be downcast.
6. The exterior parking area shall be screened with closely planted evergreens or a three-foot high fence and shown on the final revised site plan for approval.
7. The Management plan approved by the ZBA on February 9, 2005 shall be enforced.
8. This Special Permit is subject to Section 14 of the Zoning By-Law, Phased Growth. Development authorization is available as of March, 2005.

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TOM SIMPSON, Chair  
Amherst Zoning Board of Appeals

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DATE